

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3882 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL      Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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NIRMALABEN WIDOW OF SHAMBHUBHAI PURSHOTTAMBHAI PATEL

Versus

CHATURBHAI RANCHHODBHAI      ALIAS BHOIE

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Appearance:

MR SD PATEL for Petitioners

MR HM PARIKH for Respondent No. 1

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CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 28/03/2000

ORAL JUDGEMENT

#. This petition under Article 227 of the Constitution of India arises out of the proceedings under section 32G of the Bombay Tenancy and Agricultural Lands Act,1948 under the following circumstances.

#. The predecessor in title of the respondent held the land bearing Survey No.303H. No.1 and 2 each admeasuring 17 gunthas of village Karamsad as tenant since prior to

1957. The predecessor-in-title of the petitioners was the landlord. According to the petitioners, the landlord terminated the tenancy of the respondent's predecessor-in-title before 31st December, 1956 and filed application before the Mamlatdar, Anand before 31.3.1957 under section 31 read with section 29 of the B.T. & A.L. Act. Against the order of the Mamlatdar there was an appeal and ultimately the Gujarat Revenue Tribunal remanded the matter to the Deputy Collector, Kheda for hearing of the appeal again on 20.10.1963. At that stage the matter was settled between the parties and a joint application was presented. According to the petitioner, Deputy Collector, after satisfying himself that all the conditions were satisfied allowed the application of consent terms and directed that the possession of one of the two pieces of land should be restored to the petitioners. Under the consent terms the piece of land to be restored was S.No.303 H.No.1 admeasuring 17 gunthas. It is also the case of the petitioners that they made several applications for restoration of the possession but the possession was not given to them.

#. After waiting for sufficient time the petitioners made application for restoration of the land and the Agricultural Lands Tribunal passed order on 31.3.1978 and mutation entry was also effected on 10.1.1982 but it was rejected by Additional Mamlatdar on the ground that possession receipt was not produced.

#. On 17.5.1982 the respondent filed application before the Mamlatdar and Agricultural Lands Tribunal, Anand under section 32P of the Act. The application was allowed and the respondent was ordered to be deemed purchaser and purchase price was fixed at Rs.948.35. However, the landlord filed appeal which was allowed and the case was sent back for fresh decision. At that stage it was submitted on behalf of the petitioners before the Mamlatdar that in Appeal No.476/68 order was made on 15.11.1968 to give half the land to the petitioners. Thereafter the tenant had made application before the Agricultural Lands Tribunal for purchasing the land in which the order was made on 15.11.1968 to give up the land to the petitioners. Thereafter, the tenant had made application before the Agricultural Lands Tribunal for purchasing the land in which the order was made on 31.3.1978 to restore half of the land to the landlord. The tenant did not file appeal against the said order and same had become final. It was submitted that in view of the said order the tenant's application dated 17.5.1982

should be dismissed. However, the Mamlatdar came to the conclusion that the landlords do not live in the village but they are residing in Bombay and they are taking one-half share of the crop through power of attorney holder. Thus, they are not cultivating their land personally. He also found that in the revenue record the tenant's name had continued till 1981-82. As for the order to restore one-half land to the landlords which had been made earlier he observed that it had not been implemented for more than 24 years and the land was in possession of the tenant. Thus, since the tenant continued in possession till 3.3.1973, he was entitled to purchase the land under section 31FF. The Mamlatdar, therefore, by his order dated 24.12.1985 held that the tenant was entitled to purchase the land and he fixed the purchase price as stated in the order.

#. The petitioners being aggrieved by the said order of the Mamlatdar filed Appeal before the Deputy Collector. The Deputy Collector allowed the Appeal in view of the previous orders dated 15.6.1968 and 31.3.1978 and set aside the order of the Mamlatdar.

#. The respondent being aggrieved by the said order of the Deputy Collector filed revision application before the Gujarat Revenue Tribunal. The Tribunal by his judgment and order dated 24.7.1987 allowed the revision application and set aside the order of the Deputy Collector and restored the order of the Mamlatdar which was in favour of the respondent. It is the said judgment and order of the Revenue Tribunal which is under challenge in the present petition under Article 227 of the Constitution of India.

#. The Tribunal after examining the provisions of sections 29 and 31 of the Act observed that before the landlord could take the land in personal cultivation under section 31(i) there should be a notice in writing by the landlord to the tenant which had to be served on the tenant before 31.12.1956, (ii) the copy of the notice was to be sent to the Mamlatdar, that the application for possession under section 29 was to be made to the Mamlatdar by the landlord on or before 31.3.1957, (iii) the application under section 29(2) had to be filed by the landlord within a period of two years from the date on which right to obtain possession of the land is deemed to have accrued to him, and (iv) after the receipt of the application u/s.29(2) the Mamlatdar has to inquire the preliminary issues about the conditions which have been specified in clause (c) and clause (d) of section 31A and sub-sections (2) and (3) of Section 31B as to whether the

same are satisfied. If the conditions were not satisfied, the application for possession was to be rejected.

#. The petitioners were relying on the order dated 15.11.1968 passed by the Deputy Collector recording consent terms. The Tribunal observed that this order does not mention anything about Section 29 of the Act and it was not clarified whether the opponents had applied for possession of the land u/s.29 within the prescribed limit of two years. It was contended on behalf of the petitioners that there was no need to file application u/s.29 of the Act and the Tribunal further observed that at no stage it had been the case of the petitioners that they made application u/s.29 of the Act. The Tribunal said that the landlord can not get possession of the land for personal cultivation without making an application under section 29. In view of this the Tribunal held that the order passed by the Deputy Collector dated 15.11.1968 is not at all enforceable against the respondent as the petitioners have failed to submit application u/s.29 within the prescribed time limit.

#. The learned Counsel for the petitioners drew my attention to the averments made in this petition that the petitioners had terminated the tenancy before 31.12.1956 and had filed the application before the Mamlatdar before 31.3.1957 u/s.31 read with section 29 of the Act. He contended that the entire record was not before the Tribunal and the Tribunal ought to have remanded the matter for examination of the record.

##. However, as the Tribunal has said at no stage the petitioners had stated in their reply in the present proceedings that they had made application for possession u/s.29 of the Act. They only relied on the order dated 15.11.1968. The Tribunal after going through the said order observed that there is nothing to indicate in the said order that the petitioners have made any application u/s.29. Hence, the Tribunal cannot be said to have committed any error in coming to the conclusion that the said order was not enforceable in view of the fact that the petitioners had not established that they had made any application u/s.29 in the prescribed time limit. Even on the record of the present petition no document is produced to show that the petitioner had made any such application in support of the averments which they have made in the petition. In the circumstances, there is no warrant for interference with the judgment and order of the Revenue Tribunal in exercise of writ jurisdiction under Article 227 of the Constitution. The petition

therefore fails and is dismissed. Rule discharged. No  
order as to costs.

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m.m.bhatt